



Commonwealth  
of Massachusetts

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*Office of Campaign and Political Finance*  
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*Boston, MA 02108*

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Advisory Opinion

April 29, 2004  
AO-04-06

Charles J. Maguire, Jr.  
Attorney at Law  
One George Leven Drive, Suite 201  
North Attleboro, MA 02760-3580

Re: Equal Access to School Mailboxes

Dear Mr. Maguire:

This letter is in response to your March 15, 2004 request for an advisory opinion regarding the distribution of campaign materials through public school mailboxes.

You are counsel to the North Attleboro School District. The District operates nine schools, in which most of the staff, both teaching and non-teaching, are represented for collective bargaining purposes by the North Attleboro Federation of Teachers (the Federation), an affiliate of the Massachusetts Federation of Teachers and the American Federation of Teachers, AFL/CIO.

Immediately before a recent special election<sup>1</sup>, one of the candidates in the special election informed the District that representatives of the Federation distributed a letter from the Federation supporting another candidate by placing it into the mailboxes that each staff member has in the staff member's building. You believe that the letter was distributed to anyone in a Federation bargaining unit. The District had no knowledge that the letter was distributed until the matter was brought to its attention, and took no part in the letter's distribution.

The Federation is permitted to use the mailboxes, pursuant to the teachers' collective bargaining agreement, for the purpose of distributing "professional materials." Upon learning from the other candidate that the letter was distributed and after reviewing the letter, the District determined that it did not fall within the characterization of "professional materials." The

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<sup>1</sup> This office does not issue advisory opinions to address the legality of actions that have already taken place, and this opinion is issued because you have asked several questions regarding the extent to which political campaign materials may be distributed in school mailboxes in the future.

Federation, however, disputes this conclusion.<sup>2</sup> The District does not screen materials placed in mailboxes by the Federation to ensure compliance with the collective bargaining agreement.

Upon learning that the letter was distributed by the Federation using school mailboxes, the political committee of the candidate who was not endorsed by the Federation contacted the District and asked for permission to place some form of its own campaign material into the mailboxes. The committee suggested that state law required that the District provide “equal access” to the mailboxes. In response, the District did provide access to the mailboxes to the second candidate’s committee.

### QUESTIONS

(1) Is the District required to provide “equal access” if the Federation uses mailboxes in the future, and such use *is not* in accordance with a collective bargaining agreement, and is without the knowledge or approval of a District officer or representative?

Answer: No. The campaign finance law does not require the District to provide access to the mailboxes where mailboxes are used, and such use is not in accordance with a collective bargaining agreement and without the District’s knowledge or approval.

(2) Is the District required to provide “equal access” if the Federation uses mailboxes in the future, and such use *is* in accordance with a collective bargaining agreement?

Answer: No. If an authorized representative of the Federation, in accordance with a collective bargaining agreement, distributes information through the mailboxes, equal access is not required. The Federation must be careful to ensure that the information which it distributes does not relate to fundraising and that no public resources are used in its preparation or distribution.

(3) Is the District required to provide “equal access” if any other group or individual uses mailboxes in the future to distribute political information without the knowledge or approval of a District officer or representative?

Answer: No. The campaign finance law does not require the District to provide access to the mailboxes where mailboxes are used without the District’s knowledge or approval.

### DISCUSSION

In Anderson v. City of Boston, 376 Mass. 178 (1978) appeal dismissed, 439 U.S. 1069 (1979), the Supreme Judicial Court concluded that the City of Boston could not appropriate

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<sup>2</sup> Whether the distribution was in fact consistent with the collective bargaining agreement, i.e., whether the letters and other political material should be considered “professional material,” is not a question that is within the jurisdiction of this office. You have stated that even if we were to assume that the letters are not consistent with that definition in the existing collective bargaining agreement, you would want to understand whether equal access is required if distribution is consistent with a collective bargaining agreement, since the District may not want to contest the issue, or the agreement may be modified in the future.

funds, or use funds previously appropriated for other purposes, to influence the vote on a statewide ballot question. In accordance with Anderson, public resources may not be used to support or oppose political parties, candidates or ballot questions.

The court also stated that “the city’s use of telephones and printed materials provided by public funds, and its use of facilities paid for by public funds, would be improper, at least unless each side were given equal representation and access.” 376 Mass. at 200. Accordingly, a school district may not allow a candidate’s campaign to distribute literature in a public school’s staff mailboxes unless other candidates have the same access, upon request, to do so. If a group, after learning that access has been granted to an opposing group, wants to gain similar access, it must first seek approval from a district before distributing material.

A district may, however, choose a more restrictive approach than what is required under the campaign finance law, and prohibit access so long as such prohibition is equally applied. Therefore, a policy stating that political flyers may not be distributed in faculty and staff mailboxes, applied equally to all candidates, would be consistent with the campaign finance law.

Equal access cannot be triggered without the knowledge or approval of a school district officer or representative, e.g., a school principal. The use of a district’s mailboxes without the district’s knowledge or approval does not open the door for additional unauthorized use. If a use of resources is not authorized, further unauthorized use by any party would only multiply the impropriety, not remedy the original occurrence. In short, unauthorized use of a public resource cannot force a district to provide equal access to others.

Another exception to the general prohibition on the use of public resources articulated in Anderson exists where the use of certain resources for a political committee is authorized by a collective bargaining agreement between governmental entities and public employees. The office has stated that a governmental entity may, with certain restrictions, process payroll deductions for a political action committee if mandated as part of a collective bargaining agreement. See AO-95-29, AO-97-01 and AO-03-04 (use of public resources that benefits a political committee complies with Anderson if the primary purpose of such use is to comply with a collective bargaining agreement, rather than to assist the committee). Where a group is authorized to use public resources pursuant to a collective bargaining agreement, such authorization does not mean that an opposing group is entitled to equal access.

Regardless of whether public resources may be used pursuant to an equal access policy or in accordance with a collective bargaining agreement, it is important to keep in mind that Section 13 of the campaign finance law prohibits the solicitation or receipt of political contributions by appointed public employees. In addition, Section 14 states that no person, whether public employee or otherwise, shall “in any building occupied for state, county or municipal purposes demand, solicit or receive any payment or gift of money or other thing of value” for political campaign purposes. To ensure compliance with these sections, mailboxes may not be used to solicit or receive political contributions. In addition, public employees may not distribute any political campaign material during their workday without violating Anderson.

This opinion is issued solely within the context of the Massachusetts campaign finance law and is based on the representations made in your letter and to OCPF's staff. Please contact us if you have further questions.

Sincerely,

A handwritten signature in cursive script, reading "Michael J. Sullivan", followed by a vertical line.

Michael J. Sullivan  
Director

MJS:gb